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“Insights into India's Mental Health Legislation: A Socio-Legal Study”**-Author: Sushma S****INTRODUCTION**

The concept of health deals with both physical and mental well-being. Physical and mental health are beneficial to one another, but they are not widely recognized as such as physical health is constantly prioritized. There is not much importance and recognition given to mental health. Mental health is very important as it sets a basis for shaping one's personality. In other words, physical and mental health are interdependent and interrelated, and one cannot exist without the other. Mental health deals with our emotional, psychological, and social well-being. It has an impact on how we think, feel, and act. It also influences how we deal with stress, interact with people, and make good decisions.¹

Legislations play a major role in protection of such people and providing a basic rule for regulation. It is undeniable that any society need rules in numerous areas to ensure the well-being of its citizens. This is especially true for mental health care, which is a neglected sector in which powerful legislation is required.² The fundamental aim of mental health legislation is to protect, promote and improve the quality of life and mental well-being of its citizens. This paper tries to focus on the various legislations, principles and guidelines available for the empowerment of the mentally ill persons.

MENTAL HEALTH- ONE OF MANY FACTORS

According to the definition of the WHO, Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.³ It has also been characterized as a condition in which people acknowledge their own skills, are able to cope with everyday challenges, work successfully and fruitfully, and contribute to their communities. Good mental health is not temporary. It depends on each individual's day to day activities and with this fast-moving world everyone is more focused on good mental health due to various stresses of life. Mental health, like physical health, is not fixed. Mental

¹ Strengthening Mental Health Promotion. Fact sheet no. 220. Geneva, Switzerland: World Health Organization.

² S.B. Math, & D. Nagaraja, —Mental Health Legislations: An Indian Perspective In, Mental Health; Human Rights. Eds. Pratima Murthy and Nagaraja D. Publisher; National Institute of Mental Health and Neuro Sciences (Deemed University), Bangalore, India and National Human Rights Commission, New Delhi (2008). Available online at http://nhrc.nic.in/Publications/Mental_Health_Care_and_Human_Rights.pdf accessed on July 25, 2012

³ WHO

health occurs on a spectrum, or range, ranging from good, healthy functioning at one end to severe symptoms of mental health issues at the other.⁴ It is necessary for the overall prosperity of an individual. Hard instances in life, biological and family history may lead to affect an individual's mental health. People suffering from such issues are usually treated differently, denied their rights and they are frequently marginalized, alienated from society, and forced to live in relative invisibility, weakness, and disintegration. Individuals and communities' mental health is about improving their abilities and helping them to attain their self-determined goals. Mental health should be a priority for all of us, not just those who have a mental disease.⁵

To bridge the gap involved, the legislations here play a major role. All health promotions are present to protect and safeguards any individual. Similarly, mental health promotions are necessary to provide a good living condition and a friendly environment for the individuals, to encourage and support those suffering from mental health issues and help them adapt to a healthy and peaceful lifestyle.⁶ This is all a part of the basic and necessary human rights which must be provided to all and this is possible only through appropriate legislations. Internationally, the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD) was brought to protect the rights of those individuals with mental health issues so that they enjoy their basic freedom along with other members of the society.

In India, one of the most significant fundamental rights in the Indian Constitution is Article 21. It is incorporated in the Constitution with the goal of providing everyone in society with the right to life, as well as a more meaningful and healthier attitude. Right to health also falls within the preview of Article 21. Right to life includes living healthy and a peaceful life therefore it is guaranteed under this article as it is a fundamental right granted by the constitution. It is highly necessary that mentally ill persons receive good quality mental health treatment and humane living circumstances in not just institutions, but also in people's homes and in society as a whole.

MENTAL HEALTH LAW- INTERNATIONAL SCENARIO

⁴ <https://mindframe.org.au/mental-health/communicating-about-mental-ill-health>

⁵ World Health Organization, Mental Health: Strengthening Our Response. Fact Sheet of World Health Organization.

⁶ Hughes, B. & Patterson, K. (1997) The social model of Disability and the disappearing body: towards the sociology of impairment, Disability in Society;

Mental health when taken in the international scenario mainly focuses on the social concept of this i.e. to provide a healthy living condition for those suffering from mental health illness and also providing them with their basic and general rights.⁷ The fundamental aim of mental health legislations is to protect, promote and improve the lives and mental well-being of citizens without discrimination of any kind. Article 25 of the Universal Declaration of Human Rights 1948 recognises health as an essential component by stating: —Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”⁸

Mental health law is a legislative provision that protects the rights of mentally ill people who live in society. Progressive legislations should be encouraged in order to improve the quality of life of the mentally ill persons. Mental health legislations play an important role in maintaining the dignity of persons with mental disorders. Further legislations help in implementing effective mental health services by reinforcing mental health policies and plans. Conditions were terrible all across the world, and the human rights of the mentally ill were violated and mistreated. Community care was promoted in order to assess the problem. It was all about empowering those suffering from mental and behavioural issues. Some of the asylums' protective services are completely fulfilled in the community. In many developing countries very low priority is given to individual case care programmes for the mentally ill persons. Community-based mental health treatment is becoming more popular and is being adopted in Australia, Canada, China, as well as portions of Europe and the United States of America. Some Latin American, African, East Mediterranean, South East Asian, and Western European countries have presented novel services

GLOBAL PROTECTION OF RIGHTS

People with mental illness are usually excluded from the mainstream society and most times denied of their fundamental rights too. They are also subjected to a wide range of undesirable discrimination - denial of education, segregation and isolation due to imposition of social and physical barriers. Mentally ill people must be treated with the same dignity and decency as any other human being. He or she does not become a liability in society just because of

⁷ D.Chisholm et al. Scale up services for mental health: a call for action. LANCET 370: 1241-1252 (2007).

⁸ Universal Declaration of Human Rights-Article 25

certain impairments. Society should protect rights such as the right to an education, the right to work, the right to family and communal life, and other rights that are necessary for the development of the personality of mentally ill people. The law governing mental health must mainly aim to focus a structured and a systemic framework by establishing various policies and procedures for the betterment of mentally ill people.⁹ Mental health legislation should define and unify the basic concepts, values, aims, and purposes of mental health policy. Such laws are necessary to ensure that the dignity of the patient is preserved and their fundamental rights are respected.

The United Nations Principles for the Protection of the Rights of Persons with Mental Illness and the Improvement of Mental Health Care (1991) emphasize the right of every human being to the best achievable quality of bodily and mental health. It argues that human rights are included with the goal of releasing humanity from its biases and removing barriers that have hampered mentally ill people for generations. Furthermore, the World Health Organisation also developed the Mental Health Care law which helps in establishing a code for other nations to frame laws based on this and assist mentally ill persons.

The UNCRPD mainly works on shifting the attitude of the society and accepting the mentally ill people as a part of the society instead of keeping them aside from the society based on their illness. It stated that it must focus on protecting and providing them with rights rather than showing compassion and providing charity.¹⁰ Those suffering with mental health illness must be provided with the rights to avail adequate treatment and get social protection as well rather than keeping them away from the society. Also, European Courts of Human Rights uphold the European Convention on Human Rights and Fundamental Freedoms. The Council of Europe's Parliamentary Assembly Approved Recommendation 1235 (1994) on Psychiatry and Human Rights.

Globally, mental health care is not seen as a critical component of public health care. As a result, mental health law is critical in protecting the rights of the mentally ill. The primary goal of mental health law is to protect, promote, and improve the lives and mental well-being of those who are mentally ill. Sincere efforts are being made to protect, promote, and enhance

⁹ Stanev v. Bulgaria [GC], no. 36760/06, 17 January 2012, Also see D.D. v. Lithuania, no. 13469/06, 14 February

2012, Also see Kallweit v. Germany, no. 17792/07, 13 January 2011, and Also see Winterwerp v. the Netherlands, 24 October 1979, Series A no. 33.

¹⁰ World Health Organization. Resource Book On Mental Health, Human Rights And Legislation. World Health Organization Publication, Geneva. (2005).

the lives of mentally ill people. Strict steps must be implemented to ensure the execution of rules and regulations designed to safeguard the mentally ill, and provisions for the involvement of psychiatric emergency services must be accessible when needed. It must also raise awareness in society by holding regular programs and seminars under rigorous supervision.

HISTORY OF MENTAL HEALTH IN INDIA

In India, everything about health, wellness and medication have been provided in the Vedic texts. These Vedic texts have the description of mental illness and mental disorders as well. Siddha, a traditional medical system, recognized several sorts of mental problems that developed in southern India. As per the Indian texts, it is usually said that the mind and the body influence each other.¹¹ This concept has been documented in Indian history in the Ayurveda. The renowned Indian sage, Patanjali had emphasized on Yoga as a way to healthy mind, strong body, and spirituality, which enables an individual to attain self-actualization.¹² The historical roots of mental illness has been identified in India even prior to the period of King Ashoka, spirituality has always been a factor for understanding and treating psychological disorders.

During the Muslim era, people with mental illness were protected by providing them with safe shelters and adequate treatment. Though symptoms and treatments were elaborated in ancient medical practice in India, there were no distinct well-documented asylums. Mental health care was seen as a component of overall health care. Community care became popular as a result of the prevalence of big joint families and a broad support structure.¹³

In England and during the British rule in India, the main reason for mental illness was recognized as the act of devils, spirit and evil powers. It was the religious powers and bodies which took care of those suffering from those illnesses which was highly not agreed by the medical practitioners. Mentally ill people were later confined to jails and asylums. Further advances involved the establishment and consolidation of community psychiatry, which resulted in the integration of mental health treatment in the community.

¹¹ N. Kumar. The Relationship between Physical & Mental Health: Co-occurring Mental & Physical Disorders. *Indian J Med Res* 120:434–436 (2004).

¹² C.R.Chandrashekar& S.B. Math, Psychosomatic Disorders in Developing Countries: Current Issues and Future Challenges. *Current Opinion In Psychiatry* 19:201–206 (2006).

¹³ G.C. Sugandhi. *DharAnd Mardu* (Hindi). Saptchar Press, Indore. (1956).

MENTAL HEALTH LEGISLATION AND ITS SIGNIFICANCE

The Mental Health legislations were drafted mainly so that every individual suffering from mental illness shall have the right to specify the way he/she would like to be treated.

Fundamental rights are developed for the welfare of the citizens. It is applicable to all citizens irrespective of their caste, colour, region sex and other factors. But the question arises that whether is it easily available for those suffering from mental illness? article 14 speaks about equality and equal protection of law so this way it is necessary as per the constitution to protect those suffering from mental illness. Article 15 (2) and also Article 21 also are present for protecting the rights of the people especially those who are ill treated because of the mental illness.¹⁴ The Supreme Court issued a decision in Chandan Kumar Banik v. State of West Bengal to offer relief to mentally challenged prisoners of a hospital in Hooghly district who were being chained by hospital authorities to manage their rowdy and aggressive behaviour.¹⁵ The main and basic necessity of bringing up the mental health legislation is for the ease access to healthcare at all levels in the society. They focus on free supply of essential medicines so that it is easily available and accessible to all. The quality of healthcare is also highly important by maintaining scientifically approved products and services and finally there must acceptability by the society. People suffering from mental illness must not be looked down and must be treated with basic integrity and equality.¹⁶

The MHA has been aimed to consolidate and amend the laws relating to treatment and care of mentally ill persons regarding their property and matters connected there with. It deals with the formation of national and state agencies for Mental Health Services, their appointments, their functions, psychiatric hospitals and nursing homes, their establishments, and admissions of mentally ill individuals to such facilities.¹⁷ It has also established criteria for the custody of mentally ill people, as well as their property and administration. The Mental Health Act, 1987 has the salient features of:

Protecting the rights and dignity of persons with mental disorders. It aims to provide the medical health care services for the mentally ill persons, at the same time, avail good quality

¹⁴ Director General of Health Services (DGHS) National Mental Health Programme (Nmhp) for India. New Delhi, Ministry of Health and Family Welfare (1982).

¹⁵ (1995) Supp(4) SCC 505

¹⁶ R.S.Murthy. Mental health initiatives in India (1947–2010). The National Medical Journal Of India 24:98-107 (2011).

¹⁷ S.B.Math et al. Psychiatric epidemiology in India. Indian Journal of Medical Research.126;183-192 (2007).

medical care at an affordable cost and make it easily reachable. Further, it highlights their entitlement to an education, to work, and to receive social security benefits as and when they are needed. This act also focuses on providing mental health hospitals and asylums and also maintains a check on these institutions introduced by the legislation.¹⁸ They also provide provisions for creating the minimum standards which are essential and are required for the establishment of psychiatric hospitals and nursing homes for having a license, at the same time, take measures for the maintenance of minimum standards in psychiatric hospitals and psychiatric nursing homes. Furthermore, it also in certain cases it resorts to provide free legal aid to mentally ill persons at the expense of the state. The Mental Health Legislations are a positive step in safeguarding the rights of the mentally ill persons.

IMPLIED POLICY THROUGH LEGISLATIONS

Fundamental value and principles have to be considered for the betterment of the mentally ill people. Mental health services must be attentive to varied social and cultural contexts and groups, as well as the demands of isolated and rural places.¹⁹ The national mental health budget must be also appropriately framed with the burden of mental health problems. Non-discrimination and equal opportunities for education, employment, housing and social welfare should be provided to promote inclusion of persons with mental health problems and mental illness.²⁰ The policy is framed with the main goal of protecting those who have been excluded. Mental health services should meet quality standards as mandated globally and perceived suitable by local users and care-givers.

A holistic approach must be given in case of mental health care. Mainly the relationship between the body, mind and soul must be given more effect while dealing with the mental health issues. To attain policy aims and objectives, cultural ethos, Indian traditions, and their effect on behavioural patterns must be understood and harnessed. The main goal of the legislations framed in India have kept in mind these important goals which are necessary for the social benefit of the people who are suffering from mental health issues:

¹⁸ J.S. Neki. Psychiatry in South-East Asia. *British Journal of Psychiatry*. 123: 257-269 (1973). Also see G.M. Carstairs. Psychiatric problems in developing countries. *British Journal of Psychiatry* 123: 271-277 (1973).

¹⁹ S.B. Math, & D. Nagaraja, —Mental Health Legislations: An Indian Perspective In, *Mental Health; Human Rights*. Eds. Pratima Murthy and Nagaraja D. Publisher; National Institute of Mental Health and Neuro Sciences (Deemed University), Bangalore, India and National Human Rights Commission, New Delhi (2008).

²⁰ MahendraPratap Singh v. State of Orissa, AIR 1997 Ori 37.

There must be access to universal mental health care. To increase access to mental health Services of vulnerable groups including homeless persons in remote areas, difficult terrains, educationally/socially/ economically deprived sections. People suffering from mental illnesses confront stigma and prejudice in a variety of ways. Families are usually hesitant to acknowledge the existence of disease, and even when they do, they are hesitant to seek professional care. In many sections of the country, a lack of accessible, effective, and inexpensive services is a key impediment. The most prevalent difficulty for people with mental illnesses is violations of their rights.²¹ Policies, programs, and assistance for people with mental illnesses should be designed and implemented using a rights-based approach. Respecting the rights of those suffering from mental illnesses would minimize stigma and prejudice in society. This strategy envisions greater public conversations about the rights of people with mental health difficulties and the development of a system that protects those rights.

Mental health services and related activities should take into account the unique circumstances and requirements of disadvantaged communities who experience a disproportionate and increased burden of mental health disorders. Children, women, the economically and socially disadvantaged, the elderly, and those with physical impairments are among the vulnerable population. It should be assured that disadvantaged groups are not discriminated against when receiving services.²² Poverty and homelessness are more linked to mental health issues. People usually from the lower sector of the society are abandoned, poorly rescued and absent from accessible and available health care facilities. For them, these legislations help in playing a major role to protect them and their deprived rights.

CONCLUSION

Therefore in conclusion, the purpose of this paper is to highlight the mental health legislations and their main purpose for the benefit of the people suffering from mental illness. These laws are successful in protecting and advancing the rights of those who are mentally ill. Though attempts are being made, the stigma linked has yet to be eradicated. Legislation is an important mechanism to ensure appropriate, adequate, timely and humane health care services. Overall it is found that Mental Health Policies should be encouraged at all level i.e. rural and urban areas

²¹ Mental Health Commission, Code of Practice- Guidance for persons working in mental health services with people with intellectual disabilities. Chan et al, 2004

²² UN, Principles for the protection of persons with mental illness and the improvement of mental health care. Available online at <http://www.un.org/documents/ga/res/46/a46r119.htm> accessed on oct .28,2017

for the betterment of the citizens and equal treatment for those suffering from mental illness. These legislations act as a support system for these people and their overall development.

